

The second ground of the petition is cruelty. This is what *Halsbury's* (vol. 12 pp. 269 *et seq*) says on cruelty:—

"The legal conception of cruelty, which is not defined by statute, is generally described as conduct of such a character as to have caused danger to life, limb, or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. To be a ground of divorce the treatment with cruelty must be treatment since the celebration of the marriage.

There is nothing in the authorities to justify the proposition that a decree based on cruelty is a remedy given, not for a wrong inflicted, but solely as a protection for the victim."

It goes on to say that "in determining what constitutes cruelty regard must be had to the circumstances of each particular case, keeping always in view the physical and mental conditions of the parties, and their character and social status."

Now what evidence have we got to show cruelty? It is generally alleged that on various occasions in 1959, 1960 and 1961 the respondent assaulted the petitioner but that alone does not prove cruelty, because when I examined the petitioner she admitted that she suffered no physical injuries nor danger to her health. I think that was all the evidence in support of cruelty. There is no other evidence to show in what manner the respondent has been cruel. The burden of proof is on the petitioner and this she has failed to prove beyond reasonable doubt.

The petition is dismissed.

Petition dismissed.

Solicitors: *D. P. Xavier & Thambiah.*

LUEN HENG & CO. v. OAKES

[A.C.J. (Abdul Aziz J.) August 23, 1964]

[K.L. — Civil Suit No. 521 of 1965]

Practice and Procedure — Application under R.S.C. 1957 O. 14 for summary judgment — Defendant offering to pay by instalments — Whether admission of liability — Whether triable issue raised.

The defendant was sued in his own behalf and on behalf of the Cosmopolitan Club for goods supplied to the club. The defendant denied that he ordered or received the goods, but had offered to pay the amount due by instalments in order to "avoid litigation". The plaintiff applied for leave to sign judgment under Order 14 of the Rules of the Supreme Court but this application was dismissed by the Assistant Registrar who held that on offer made by the defendant to pay by instalments in order to avoid litigation does not amount to an admission of liability. On appeal,

Held: the letter offering payment by instalments could be interpreted as an admission of liability or an independent offer to protect the reputation of the club in respect of misfeasance on the part of the staff of the club and as this raised a triable issue, the Registrar was correct in refusing leave to sign final judgment.

A Case referred to:—

(1) *Jacobs v. Booth's Distillery Co.* (1901), 85 L.T. 262.

CIVIL SUIT.

B. C. Lee for the plaintiff.

S. Sothi for the defendant.

B Abdul Aziz J. (delivering oral judgment): This relates to an appeal against the decision of the senior assistant registrar dismissing an application by the plaintiff for leave to sign judgment under Order 14 of the Rules of the Supreme Court.

C In her judgment she says firstly that the defendant was also being sued on his own behalf for goods supplied to the club and secondly the defendant denied having ordered or received the goods. She went on to say that the fact that there was an offer made by the defendant to pay by instalments the amount due which offer was made in order to avoid litigation does not amount to an admission of liability. She therefore refused leave to sign judgment. Against that order the plaintiff now appeals.

E It has been said that "the summary jurisdiction conferred by this Order (O. 14) must be used with care. A defendant ought not to be shut out from defending unless it is very clear indeed that there is no case in the action under discussion. Summary judgment under this rule should not be granted when any serious conflict as to the matter of fact or any real difficulty as to matter of law arises." In the case of *Jacobs v. Booth's Distillery Co.*⁽¹⁾ it is stated that "Order 14 was not intended to shut out a defendant who could show that there was a triable issue applicable to the claim as a whole from laying his defence before the court or to make him liable in such a case to put on terms of paying into court as a condition of leave to defend."

G The whole case rests on the interpretation of that part of the letter offering payment by instalments to "avoid litigation" sent by Mr. Oakes as treasurer of the club. That letter, to my mind, can be interpreted to mean an admission of liability or an independent offer to protect the reputation of the club in respect of misfeasance on the part of the staff of the club. This is a triable issue and is not a matter for the registrar to consider when dealing with an application.

I therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok; Lovelace & Hastings.*